

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE**

MELODIE DECKER, LANAE)
HANSULD, CYDNEE HARRELL,)
KATIE TRENTAM, KIMBERLY ROSS,)
and SHANNON ROBERTS, On Behalf of)
THEMSELVES and All Others Similarly)
Situating,)

Plaintiffs,

No. 3:12-cv-563
(VARLAN/SHIRLEY)

v.

SUBWAY SANDWICHES AND)
SALADS, LLC, EASTERN TENNESSEE)
SUBWAY DEVELOPMENT, INC.,)
CHATTANOOGA SUBWAY LLC, EAST)
TENNESSEE SUBWAY LLC, TRI CITIES)
SUBWAY LLC, FIVE STAR SUBWAY)
LLC, FOOTHILLS SUBWAY LLC, JOHN)
P. BOIKE, and RANDALL E. LOWE,)

Defendants.

MOTION FOR ATTORNEYS' FEES AND COSTS

Pursuant to the Judgment entered in this matter, Plaintiffs, by and through undersigned counsel, hereby request an Order from this Honorable Court awarding Plaintiffs' attorneys' fees and costs in the amount of **\$78,222.06**. In support of this Motion, Plaintiffs submit the time records of its attorneys for the work performed in obtaining the Judgment for the Plaintiffs entered in this matter along with the Affidavit of James H. Price for the Court's consideration.

INTRODUCTION

This matter involves claims brought under several causes of action against the Defendants, including violations of the Fair Labor Standards Act ("FLSA"), on behalf of the Plaintiffs and others who are similarly situated. These claims were successfully pursued to Judgment on behalf of the named Plaintiffs with each named Plaintiff receiving Fifteen

Thousand Dollars (\$15,000.00). In addition, the Judgment provides that Defendants are to pay the Plaintiffs' reasonable attorneys fees and expenses.

Given the Defendants' denials of these claims in their Answer to the Amended Complaint and, further, given that the award to each Plaintiff more than exceeded ten (10) times the amount of each Plaintiff's actual damages, the fees requested herein are reasonable, and were necessary and directly related to the result Plaintiffs obtained in this matter.

TIMING

The Complaint in this matter was filed on October 29, 2012. It was not until almost one year later, on September 13, 2013, that Defendants filed their Offer of Judgment. Attached for the Court's review, as **Exhibit A**, are the time records of the Plaintiffs' attorneys evidencing the time and work expended in preparing this matter to reach the point at which Defendants offered to pay each Plaintiff more than ten (10) times the amount of actual damages suffered. As the Court can imagine, this result took no small amount of effort. In order to obtain the ultimate result in this matter, counsel for the Plaintiffs were required to expend a total of 304.10 hours toward the case. As evidenced by the Affidavit of James H. Price, attached hereto as **Exhibit B**, the hours expended were necessary and directly related to the matter herein.

RESULT

As the Court can see, the result obtained in this matter is unusual in the context of FLSA claims. Because of the complexity involved in proving violations of the FLSA, many matters result in attorneys' fees being awarded that substantially exceed the amount of the award for the injured party. The result in this case is that the attorneys' fees and costs being sought are substantially less than the amount awarded to the Plaintiffs.

RECENT RULINGS OF THIS COURT

On January 30, 2013, this Court entered the Report and Recommendation of U.S. Magistrate Judge Clifford Shirley, Jr. in the matter of Warren Grant v. The Shaw Group, Inc. and Shaw Environmental, Inc., No. 3-08-cv-350, another FLSA case, a copy of which is attached hereto as **Exhibit C**. In that Report, Judge Shirley found that the reasonable hourly rate required to attract attorneys in the Eastern District of Tennessee, as of 2013, is \$248.42.

FEES AND COSTS REQUESTED

A total of 304.10 hours were expended in successfully prosecuting this matter to Judgment. Applying the applicable rate of \$248.42, counsel for the Plaintiffs asks the Court to order payment to Plaintiffs' counsel in the amount of \$75,544.52. In addition, Plaintiffs' counsel asks that the Court order payment to Plaintiffs' counsel in the amount of \$411.20 for costs.

In addition, as provided in this Circuit, Plaintiffs' counsel asks the Court to award it three percent (3%) of the total amount of the fees being sought, as costs properly awarded in moving for payment of fees via this Motion. This amount is \$2,266.34.

Therefore, Plaintiffs' counsel seeks an Order of this Court directing total payment to Plaintiffs' counsel by the Defendants in amount of **\$78,222.06** pursuant to the Judgment entered in this matter.

Respectfully submitted this 5th day of November, 2013.

By: /s/ James H. Price
James H. Price
W. Allen McDonald
LACY, PRICE & WAGNER, P.C.
249 North Peters Road, Suite 101
Knoxville, Tennessee 37923
(865) 246-0800
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2013, a copy of the foregoing was served by email and regular mail upon the following:

Gregory M. Utter (*admitted pro hac vice*)
Rachael A. Rowe (*admitted pro hac vice*)
KEATING MUETHING & KLEKAMP PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
Phone: (513) 579-6540
Fax: (513) 579-6457
gmutter@kmklaw.com
rrowe@kmklaw.com

Attorneys for Defendants

Robert H. Watson, Jr.
Emily A. Cleveland
WATSON, ROACH, BATSON, ROWELL &
LAUDERBACK, P.L.C.
P.O. Box 131
Knoxville, TN 37902
Phone: (865) 637-1700
Fax: (865) 525-2514
rwatson@watsonroach.com
ecleveland@watsonroach.com

The foregoing will also be filed electronically via the Court's CM/ECF system and therefore served on all parties.

By: /s/ James H. Price
James H. Price
LACY, PRICE & WAGNER, P.C.
Attorneys for Plaintiffs